

United States District Court
Eastern District of California

Patrick R. Holley, Sr.,

Plaintiff,

vs.

No. Civ. S 04-2006 MCE PAN P

Order

California Department
of Corrections, et al.,

Defendants.

-oOo-

Plaintiff is a state prisoner without counsel prosecuting this civil rights action in forma pauperis. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

I have reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and find it states a cognizable claim against defendants Youngblood, Moreno, D. S. Jones, Davis, R. W. Williams, M. Veal and K. Aronsen.

The complaint states no cognizable claim against the

1 California Department of Corrections or the California Medical
2 Facility. Plaintiff's claims against these defendants are
3 dismissed.

4 Plaintiff may proceed forthwith to serve defendants
5 Youngblood, Moreno, D. S. Jones, Davis, R. W. Williams, M. Veal
6 and K. Aronsen and pursue his claims against only those
7 defendants or he may delay serving any defendant and attempt to
8 state a cognizable claim against the California Department of
9 Corrections and the California Medical Facility.

10 If plaintiff elects to attempt to amend his complaint to
11 state a cognizable claim against the California Department of
12 Corrections and the California Medical Facility, he has 45 days
13 so to do. He is not obligated to amend his complaint and if he
14 does it unavoidably will delay this litigation.

15 If plaintiff elects to proceed forthwith against defendants
16 Youngblood, Moreno, D. S. Jones, Davis, R. W. Williams, M. Veal
17 and K. Aronsen, against whom he has stated a cognizable claim for
18 relief, then within 15 days he must return materials for service
19 of process enclosed herewith. In this event the court will
20 construe plaintiff's election as consent to dismissal of all
21 claims against the California Department of Corrections and the
22 California Medical Facility without prejudice.

23 Any amended complaint must show the federal court has
24 jurisdiction, the action is brought in the right place and
25 plaintiff is entitled to relief if plaintiff's allegations are
26 true. It must contain a request for particular relief.

1 Plaintiff must identify as a defendant only persons who
2 personally participated in a substantial way in depriving
3 plaintiff of a federal constitutional right. Johnson v. Duffy,
4 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to
5 the deprivation of a constitutional right if he does an act,
6 participates in another's act or omits to perform an act he is
7 legally required to do that causes the alleged deprivation). If
8 plaintiff contends he was the victim of a conspiracy, he must
9 identify the participants and allege their agreement to deprive
10 him of a specific federal constitutional right.

11 In an amended complaint, the allegations must be set forth
12 in numbered paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may
13 join multiple claims if they are all against a single defendant.
14 Fed. R. Civ. P. 18(a). If plaintiff has more than one claim
15 based upon separate transactions or occurrences, the claims must
16 be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

17 The federal rules contemplate brevity. See Galbraith v.
18 County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir. 2002)
19 (noting that "nearly all of the circuits have now disapproved any
20 heightened pleading standard in cases other than those governed
21 by Rule 9(b)"); Fed. R. Civ. P. 84; cf. Rule 9(b) (setting forth
22 rare exceptions to simplified pleading).

23 Plaintiff's claims must be set forth in short and plain
24 terms, simply, concisely and directly. See Swierkiewicz v.
25 Sorema N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting
26 point of a simplified pleading system, which was adopted to focus

1 litigation on the merits of a claim."); Fed. R. Civ. P. 8.

2 Plaintiff must eliminate from plaintiff's pleading all
3 preambles, introductions, argument, speeches, explanations,
4 stories, griping, vouching, evidence, attempts to negate possible
5 defenses, summaries, and the like. McHenry v. Renne, 84 F.3d
6 1172 (9th Cir. 1996) (affirming dismissal of § 1983 complaint for
7 violation of Rule 8 after warning); see Crawford-El v. Britton,
8 523 U.S. 574, 597 (1998) (reiterating that "firm application of
9 the Federal Rules of Civil Procedure is fully warranted" in
10 prisoner cases). It is sufficient, for example, for a prisoner
11 who claims the conditions of his imprisonment violate the Eighth
12 Amendment prohibition against cruel and unusual punishment to
13 allege that an identified state actor used force against
14 plaintiff maliciously and sadistically for the very purpose of
15 causing harm. See Farmer v. Brennan, 511 U.S. 825, 834 (1994).
16 (On the other hand, prison officers imposing discipline act in
17 haste, under pressure and without the luxury of a second chance;
18 therefore, no Eighth Amendment violation occurs where force is
19 applied to maintain or restore discipline but not maliciously and
20 sadistically.)

21 The court (and defendant) should be able to read and
22 understand plaintiff's pleading within minutes. McHenry, supra.
23 A long, rambling pleading including many defendants with
24 unexplained, tenuous or implausible connection to the alleged
25 constitutional injury, or joining a series of unrelated claims
26 against many defendants, very likely will result in delaying the

1 review required by 28 U.S.C. § 1915 and an order dismissing
2 plaintiff's action pursuant to Fed. R. Civ. P. 41 for violation
3 of these instructions.

4 If plaintiff's pleading is deficient on account of an
5 omission or technical defect, the court will not dismiss it
6 without first identifying the problem and giving plaintiff an
7 opportunity to cure it. Noll v. Carlson, 809 F.2d 1446 (9th Cir.
8 1986). Plaintiff's pleading will be construed "liberally" to
9 determine if plaintiff has a claim but it will be dismissed if
10 plaintiff violates the federal rules, once explained, or the
11 court's plain orders.

12 An amended complaint must be complete in itself without
13 reference to any prior pleading. Local Rule 15-220; see Loux v.
14 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an
15 amended complaint, the original pleading is superseded.

16 Plaintiff is admonished that by signing a second-amended
17 complaint he certifies he has made reasonable inquiry and has
18 evidentiary support for his allegations and that for violation of
19 this rule the court may impose sanctions sufficient to deter
20 repetition by plaintiff or others. Fed. R. Civ. P. 11. Prison
21 rules require plaintiff to obey all laws, including this one, and
22 plaintiff may be punished by prison authorities for violation of
23 the court's rules and orders. See 15 Cal. Admin. Code § 3005.

24 Title 42 of the United States Code § 1997e(a) provides that
25 a prisoner may bring no § 1983 action until he has exhausted such
26 administrative remedies as are available to him. The requirement

1 is mandatory. Booth v. Churner, 532 U.S. 731, 741 (2001). A
2 California prisoner or parolee may appeal "any departmental
3 decision, action, condition, or policy which they can demonstrate
4 as having an adverse effect upon their welfare." 15 California
5 Administrative Code § 3084.1, et seq. An appeal must be
6 presented on a CDC form 602 that asks simply that the prisoner
7 "describe the problem" and "action requested." Therefore, this
8 court ordinarily will review only claims against prison officials
9 within the scope of the problem reported in a CDC form 602 or an
10 interview or claims that were or should have been uncovered in
11 the review promised by the department. Plaintiff further is
12 admonished that by signing an amended complaint he certifies his
13 claims are warranted by existing law, including the law that he
14 exhaust administrative remedies, and that for violation of this
15 rule plaintiff risks dismissal of his entire action, including
16 his claims against defendants Youngblood, Moreno, D. S. Jones,
17 Davis, R. W. Williams, M. Veal and K. Aronsen.

18 Accordingly, the court hereby orders that:

19 1. Claims against the California Department of Corrections
20 and the California Medical Facility are dismissed with leave to
21 amend. Within 45 days of service of this order, plaintiff may
22 amend his complaint to attempt to state cognizable claims against
23 these defendants. Plaintiff is not obliged to amend his
24 complaint and if he does it inevitably will delay this
25 litigation.

26 2. The pleading states cognizable claims against defendants

1 Youngblood, Moreno, D. S. Jones, Davis, R. W. Williams, M. Veal
2 and K. Aronsen. With this order the Clerk of the Court shall
3 provide to plaintiff a blank summons, a copy of the pleading and
4 the motion for a temporary restraining order and preliminary
5 injunction filed March 21, 2005, seven USM-285 forms and
6 instructions for service of process on defendants Youngblood,
7 Moreno, D. S. Jones, Davis, R. W. Williams, M. Veal and K.
8 Aronsen. Within 15 days of service of this order plaintiff may
9 return the attached Notice of Submission of Documents with the
10 completed summons, the completed USM-285 forms, and eight copies
11 each of the March 21, 2005, complaint and motion. The court will
12 transmit them to the United States Marshal for service of process
13 pursuant to Fed. R. Civ. P. 4. Defendants Youngblood, Moreno, D.
14 S. Jones, Davis, R. W. Williams, M. Veal and K. Aronsen will be
15 required to respond to plaintiff's allegations within the
16 deadlines stated in Fed. R. Civ. P. 12(a)(1). In this event, the
17 court will construe plaintiff's election to proceed forthwith as
18 consent to an order dismissing his defective claims against the
19 California Department of Corrections and the California Medical
20 Facility without prejudice.

21 Dated: June 2, 2005.

22 /s/ Peter A. Nowinski
23 PETER A. NOWINSKI
24 Magistrate Judge
25
26

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Plaintiff,

vs.

California Department
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Defendants.

No. Civ. S 04-2006 MCE PAN P

Notice of Submission of Documents

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Plaintiff hereby submits the following documents in
compliance with the court's order filed _____:

1 completed summons form

7 completed forms USM-285

8 copies each of the March 21, 2005
Complaint & Motion

Dated: _____

Plaintiff